



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Galaxy Scientific Corporation

File: B-258246

Date: December 30, 1994

Robert G. Fryling, Esq., and John J. Monsees, Esq., Blank, Rome, Comisky & McCauley, for the protester.  
Alexander J. Brittin, Esq., McKenna & Cuneo, for System Resources Corporation, an interested party.  
Thomas E. Flatley, Esq., and William R. Sheehan, Esq., Federal Aviation Administration, for the agency.  
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency cost realism analysis is improper is denied where the record shows that the protester proposed significant reductions in its best and final offer and the agency reasonably determined that many of the reductions were unrealistic; might result in either an inability to hire experienced personnel, or significant cost escalation; and were based on unsupported assumptions.

### DECISION

Galaxy Scientific Corporation protests the award of a contract to System Resources Corporation (SRC) by the Federal Aviation Administration (FAA), under request for proposals (RFP) No. DTFA03-90-R-00017, issued for 686,872 hours of engineering and technical services in support of the FAA's Concept Analysis Division, which conducts research in aviation technologies. Galaxy asserts that the agency performed an improper cost realism analysis, failed to conduct a cost/technical tradeoff, and abandoned the evaluation approach set forth in the RFP.

We deny the protest.

### BACKGROUND

The RFP was issued on January 3, 1991, and contemplated award of a 5-year cost-plus-fixed-fee contract to the offeror whose proposal was determined most advantageous to the government. The competition was limited to small disadvantaged businesses. Offerors were advised that the agency would consider five evaluation factors, in descending

order of importance: (1) understanding the requirements; (2) experience in relevant fields of work; (3) experience with the FAA Air Traffic Control System; (4) management plan; and (5) management ability.

The agency received four proposals by the July 10 closing date. After an initial evaluation, discussions, and an amendment to the solicitation which resulted in a pre-award challenge by one of the other offerors, the agency asked for updated cost proposals in August 1993. After again holding discussions with all four offerors, the agency requested best and final offers (BAFO) by May 17, 1994. The technical portion of each offeror's BAFO was evaluated by a technical review team, while the cost portion was evaluated by a cost analyst.

At the conclusion of the technical evaluation, the scores were as follows (maximum possible score 2,000):

	<u>SRC</u>	<u>Company A</u>	<u>Galaxy</u>	<u>Company B</u>
Score	1,901	1,818	1,583	1,552
Percentile	95	91	79	78

After reviewing the BAFO cost proposals, significant adjustments for cost realism were made to each proposal. The following table shows the results of the cost realism adjustments to each offeror's proposed costs:

	(Costs in millions of \$)	
	<u>Proposed Costs</u>	<u>Evaluated Costs</u>
SRC	\$29.6	\$36.5
Company A	34.0	37.4
Galaxy	23.8	37.3

Upon receiving the results of the technical and cost analysis, the source evaluation board (SEB) decided to request a final review of both the cost and technical proposals by the technical review panel chairman to determine if there were inconsistencies that might not have been apparent to reviewers looking at only the technical or cost component of the BAFOs. This review resulted in the identification of additional concerns regarding each of the proposals, and these concerns were integrated into the SEB's briefing of the source selection official (SSO).

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<sup>1</sup>For reasons unrelated to this protest, Company B's proposal was determined unacceptable after evaluation of its BAFO submission. As a result, only the proposals of SRC, Galaxy, and Company A were evaluated for cost realism.

At the conclusion of the evaluations, the SSO selected SRC for award, as the offeror with the highest technical score, and the lowest evaluated cost. The award was made on August 12, and this protest followed.

#### ANALYSIS

Galaxy argues that the FAA's cost realism review was improper in several areas, that the agency abandoned the evaluation approach set forth in the solicitation, and failed to make a proper cost/technical tradeoff. With respect to the cost realism adjustments, we have reviewed each of the adjustments; the explanation of the adjustments prepared by the agency; and the protester's response; and have concluded that the cost adjustments were reasonable. Rather than discuss each adjustment, we will provide an overview of the issues which addresses representative examples.

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Management Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

#### Direct Labor Rates

The greatest area of dispute between Galaxy and the FAA concerns the significant reduction of direct labor costs between Galaxy's earlier proposals and its BAFO. In July 1991, Galaxy proposed to perform this effort for \$29.9 million, and revised its proposal to \$32.1 million in response to a request for revised proposals in 1993. When BAFOs were submitted in May 1994, Galaxy's proposed costs dropped by approximately 26 percent to \$23.8 million.

According to the FAA, this drop in proposed costs seemed excessive since the number of labor hours were specified in the RFP and had not changed. As a result, the FAA made several upward adjustments to Galaxy's direct labor costs. These included: (1) an upward adjustment to the BAFO for

five senior personnel; to the rates that had been proposed in Galaxy's 1993 revised cost proposal (+\$1.5 million); (2) replacement of certain proposed wages with the applicable (and higher) wage determination rates (+\$1.9 million); and (3) an upward adjustment to Galaxy's proposed engineering rates to bring them into alignment with industry standards (+\$1.0 million).<sup>2</sup>

Galaxy generally does not challenge the specifics of the FAA adjustments, but instead argues that the agency should have treated its proposed direct labor rates as capped, since the rates were based on the actual salaries of in-house Galaxy employees. In this regard, Galaxy argues that the FAA's reliance on Galaxy's earlier proposal, on industry standards, and on wage determinations was unreasonable because the salaries proposed were actual salaries.

Galaxy's complaint, in substantial measure, simply reflects its failure to recognize the agency's responsibility to protect the government from cost escalations when awarding a cost-type contract. For example, Galaxy's contention that its use of actual salary amounts in its proposal should be viewed as a de facto cap is inconsistent with any plausible meaning of that term, and with the facts in this protest. As a general rule, a cap on a category of costs in a cost reimbursement contract shifts the government's risk of bearing the expense of cost overruns back to the contractor. Halifax Technical Servs., Inc., B-246236.6 et al., Jan. 24, 1994, 94-1 CPD ¶ 30; Vitro Corp., B-247734.3, Sept. 24, 1992, 92-2 CPD ¶ 202. Here, Galaxy offered no such protection in its proposal, and in our view, the agency acted reasonably by increasing the proposed costs to more accurately reflect what a contract award to Galaxy would actually cost the government.

Galaxy also argues that the agency overlooked Galaxy's significant growth over the nearly 4 years since this procurement began, and failed to consider that the company has a larger, lower-cost pool of employees than in 1991. Although Galaxy is correct about its growth over the past 4 years, its argument overlooks the fact that its revised cost proposal of 1993--submitted after 3 of the 4 years of growth had occurred--gave no hint of the cost reductions that it now argues were properly reflected in its 1994 BAFO. In addition, the FAA properly must consider the 5-year term of this contract. If Galaxy is unable to retain its employees at its proposed rates, and is forced to pay higher market rates in later years to meet the experience requirements of the contract, the FAA will be forced to

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<sup>2</sup>With associated overhead and general and administrative expenses, these direct labor adjustments accounted for approximately \$8.7 million of the total \$13.5 million cost realism adjustment.

reimburse Galaxy for those higher costs. As a result, we conclude that the agency reasonably rejected Galaxy's low proposed labor rates.

As a specific example, when the FAA reviewed Galaxy's proposed engineering rates, the agency reasonably noted that Galaxy's rates had dropped from a range of approximately \$15 to \$20 per hour to a range of \$12 to \$15 per hour. After comparing these rates to government wages for engineers, and after researching the average salary for an engineer from the "Bureau of Labor Statistics Bulletin for White Collar Pay in Private Service Producing Industries," March 1989, the FAA concluded that a rate of approximately \$20 per hour was more realistic than the rates proposed by Galaxy.

We consider this review of engineering rates reasonable, since an engineer employed at Galaxy's BAFO rates might discern that he or she could earn significantly more money working either for the government, or for another company. Because this contract will last for 5 years, the agency reasonably was concerned about replacing departing engineers with engineers who will have to be paid rates significantly above those proposed here. Finally, we note that other than a general claim that the FAA's approach was unreasonable, Galaxy has offered no evidence to challenge the FAA's calculation of a more realistic hourly rate for engineers.

#### On-Site Labor Overhead

In another significant adjustment, the FAA corrected for an assumption first introduced in Galaxy's BAFO--~~i.e.~~, that approximately 29 percent of all labor hours used to perform this effort would be incurred at the government facility. As a result, Galaxy used a lower labor overhead rate for 29 percent of its labor hours, presumably because it hoped to provide less space and support for these employees.

The FAA explained that it rejected Galaxy's proposed approach because the government did not have the space to house Galaxy's employees, and because permitting Galaxy to use a lower overhead rate for this element of its proposal would unfairly prejudice other offerors, who made no such assumption. The agency's decision to reject this approach, and to instead use Galaxy's regular labor overhead rate, added approximately \$1.1 million to Galaxy's proposed costs.

We see nothing unreasonable about the FAA's decision to reject Galaxy's proposal to use a lower labor overhead rate for 29 percent of its labor hours. First, we note that Galaxy's approach to allocating overhead to its employees was not addressed in its technical proposal, only in its cost proposal. Thus, the technical proposal does not explain how this would occur. In addition, Galaxy first introduced this assumption in its BAFO, precluding the agency from readily discussing or clarifying this assumption

with Galaxy, or from implementing a provision in the RFP to advise all offerors of the possibility of using government space and offering a lower overhead rate as a result. Since the agency reasonably concluded that it would be unfair for only Galaxy to incorporate such an approach in its proposal, and explained that it did not have room for housing Galaxy's employees, we think this adjustment was unobjectionable.

#### Evaluation Approach and Cost/Technical Tradeoff

In contending that the FAA abandoned its stated evaluation approach, Galaxy argues that the FAA improperly selected the highest-cost, highest-rated technical proposal--rather than the lowest-cost technically acceptable proposal--and improperly introduced a third evaluation review not anticipated by the solicitation.

As a preliminary matter, Galaxy's claim that the RFP advised offerors that the agency would award a contract to the offeror with the lowest-cost technically acceptable proposal is simply incorrect. In any event, since we conclude that the cost realism review here was reasonable, the agency did, in fact, award to the offeror with the lowest evaluated costs.

Galaxy also argues that the SEB's decision to subject the proposals to a third review by an evaluator--the chairman of the technical review panel--who would look at both the technical and cost proposals was improper. According to

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<sup>3</sup>Offerors who introduce new, and previously unconsidered, issues into a procurement after an agency has held discussions and requested BAFOs, bear the responsibility that the agency may reject, or otherwise correct for, the new information. See Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76.

<sup>4</sup>Galaxy also argues that this approach was reasonable because a former contractor "experienced approximately a 35 percent ratio for on-site work." Galaxy comments at 9. Galaxy does not clearly claim that the amount of on-site work translates to a similar reduction in the need for support services for these employees. In addition, regardless of any past experience, the FAA has explained that it has no room for housing 29 percent of Galaxy's work force--which would appear to be required in order to justify any significant reduction in the labor overhead rate.

<sup>5</sup>The RFP clearly states in section M that "[t]he technical factor is to be considered to be significantly more important than cost, however cost will be increasingly more important as the difference between the technical factor scores decreases." RFP ¶ M.1.

Galaxy, this approach deviated from the evaluation scheme. We do not agree. Given the long time required to complete this procurement, we see nothing unreasonable in the agency's decision to take one last look at both the technical and cost proposals to ensure that no issues were overlooked by the evaluators. Further, there is nothing in the record which suggests that this review deviated from the evaluation scheme published in the RFP.

As a final matter, Galaxy argues that the FAA unreasonably failed to conduct a cost/technical tradeoff. As explained above, the agency here conducted a cost realism review and then selected the proposal with the lowest evaluated cost and the highest technical score. As a result, there was no need to trade cost savings to achieve greater technical merit, and no such determination was required.

The protest is denied.

\s\ Paul Lieberman  
for Robert P. Murphy  
General Counsel